IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23/10/2002

Coram

The Honourable Mr. Justice R.JAYASIMHA BABU
and
The Honourable Mrs. Justice PRABHA SRIDEVAN

L.P.A. No. 4 of 1999
and L.P.A.Nos. 5 to 7 of 1999

Kumar (Minor),
rep. by his father &
next friend Manickam. ..Appellant in
all the appeals

-Vs-

National Insurance Co.Ltd.,
East Raja Street,
Pudukkottai. ..1st Respondent in
all the appeals

Karuppayi
Veerayi
Minor Marimuthu
Minor Vijayarani

..Respondents 2 to 5 in
L.P.A.No.4 of 1999
Arayee
Karuppayee
Minor Veluchamy
Minor Kalyani
Minor Thayalnaygi
Minor Anjalai
Minor Marimuthu ..Respondents 2 to 8 in
L.P.A.No.5 of 1999

Ponniah ..Respondent No.2 in
L.P.A.No.6 of 1999
Chinnathal
Minor Sundari
Karuppayi ..Respondents 2 to 4 in
L.P.A.No.7 of 1999

Appeals against the common judgment of the learned single Judge dated

29.11.1996, in C.M.A.Nos.635, 636, 638 and 639 of 1995.

!For Appellant
(In all the appeals) : Mrs.B.Krishnaveni,
for Mr.T.R.Rajaraman

^For 1st Respondent
(In all the appeals) : Mr.N.Vijayaraghavan

For other respondents
(In all the appeals) : Mr.A.Muthukumar

:JUDGMENT

(Delivered by R.JAYASIMHA BABU, J.)

The appellant in all these appeals is the owner of the lorry involved in the accident. On 23.7.1987, the lorry was carrying steel rods and some employees of the appellant. The 6th respondent in L.P.A.No.4 of 1999, who has since been given up, was the driver. He drove the lorry in a rash and negligent manner when he took a turn, which resulted in the death of four employees, who travelled in the lorry and injury to another. The Tribunal awarded compensation to the legal representatives of the deceased, making the insurer and the insured liable to pay the compensation. On appeal, the learned single Judge absolved the insurance company from liability to pay compensation and, therefore, the owner of the lorry has filed the present appeal.

2. The principal contention advanced for the owner is that the driver of the vehicle, the vehicle admittedly being a lorry, was in possession of a licence which permitted him to drive heavy passenger vehicles and, therefore, the driver should be regarded as having possessed a licence to drive the lorry as well. Reliance is placed on the definitions of 'heavy goods vehicle' and 'heavy passenger motor vehicle' as found in Sections 2 (9) and 2 (9-A), respectively, of the Vehicles Act, 1939. "Heavy goods vehicle" is defined to mean any goods vehicle, the registered laden weight of which, or a tractor the unladen weight of which exceeds 11,000 kilograms. "Heavy passenger motor vehicle" is defined to mean any public service vehicle or omnibus the registered laden weight of either of which, or a motor car the unladen weight of which exceeds 11,000 kilograms. It was submitted that as these two vehicles are equally weighty, the ability to drive one would necessarily imply the ability to drive the other. The driver, therefore, according to the submission, is to be regarded as competent to drive the heavy goods vehicle as also the heavy passenger motor vehicle and the fact that the licence did not specify heavy goods vehicle as one of the vehicles which the driver was licensed to drive should not make a difference.

3. The argument so advanced is only superficially attractive. The

scheme of the Act leaves no manner of doubt that the driving licence which is a pre-requisite for driving a motor vehicle in any public place is the driving licence issued in accordance with the provisions of the Act. 'Driving Licence' is defined in Section 2 (5-A) as meaning, "the document issued by a competent authority under Chapter II, authorising the person specified therein to drive a motor vehicle or a motor vehicle of any specified class or description". Section 3 of the Act imposes an embargo on any person driving a motor vehicle in any public place "unless he holds an effective driving licence issued to himself authorising him to drive the vehicle". That Section further provides that "no person shall so drive a motor vehicle as a paid employee or shall so drive a transport vehicle unless his driving licence specifically entitles him to do so".

4. The Supreme Court, in the case of Ashok Gangadhar Maratha -vs- Oriental Insurance Company Ltd., (1999) 6 SCC 620, after referring to Section 3, explained it's import thus:-
"This Section uses two expressions, namely. "Motor vehicle" and " effective driving licence". "Effective" would mean a valid licence both as regards the period and type of vehicle".

The driving licence which the driver is required to hold when the motor vehicle is used in a public place is the licence to drive the particular type of vehicle and not merely the licence to drive any other type of vehicle. The classification of vehicles in the Act is such that though the heavy passenger vehicle as also the heavy goods vehicle are transport vehicles, nevertheless they form distinct categories and the licence which a person intending to drive these vehicles is required to obtain is a licence issued with reference to the particular class of vehicle. A licence issued which permits the driving of a heavy passenger vehicle is not a licence issued for the purpose of driving a heavy goods vehicle. Even though it may appear that a person, who knows how to operate the controls of a heavy motor vehicle and has been driving a heavy vehicle which carries passengers, would have the necessary skill to drive a heavy goods vehicle, the driving of the heavy goods vehicle by a person who does not possess a licence which enables him to drive that type of vehicle would be a breach of Section 3 of the Motor Vehicles Act. For the purposes of the Act, such a person cannot be regarded as one who had the valid or effective Driving Licence.

5. In the case of Ashok Gangadhar Maratha, referred to above, the Apex Court held in favour of the claimant only after it found that the vehicle that was being driven was one which did not fall within the class of 'transport vehicle', but on account of its weight it was only a light motor vehicle and, therefore, the licence possessed by the driver to drive a light motor vehicle was a valid licence. On that basis it was held that there had been no breach of terms of the policy.

6. In this case, there is sufficient evidence to hold that the vehicle that was involved in the accident is a heavy goods vehicle, which was carrying a load of iron rods and was also carrying some of the workmen employed by the owner of the vehicle. That heavy goods vehicle was being driven by a person who did not have a licence for driving a heavy goods

vehicle. The licence that he had was for driving a heavy passenger vehicle, which was a different class of vehicle for the purposes of the Act. The fact that the vehicle was involved in the accident resulting in loss of lives as also injuries to another have also been established. Though the vehicle had been insured, the policy of insurance contained a condition which condition was one permitted to be incorporated in the policy under Section 96 of the Act. The condition in the policy was that the person driving the vehicle was to be a person holding "a valid driving licence at the time of the accident or had held a permanent driving licence (other than a learner' s licence) and is not disqualified for holding or obtaining such a licence". Section 96 (2) (b) of the Act in sub-clause (ii) permits the incorporation of that condition. That sub-clause refers to "a condition excluding driving by a named person or persons or by any person who is not duly licensed or by any person who has been disqualified for holding or obtaining a driving licence during the period of disqualification".

7. The accident in which four persons died and one other was injured occurred on 23.7.1987, more than fifteen years back. It is unfortunate that the injured as also the dependents of the deceased have still not been paid any compensation on account of the inter-se dispute as between the owner of the vehicle and the insurer. The Tribunal had held that the insurer was liable to pay the compensation. The insurer having challenged that award, the money was directed to be and was deposited by the insurer before the Tribunal and it has remained there all these years. After the learned single Judge allowed the insurer's appeal, we are informed, the insurer applied for withdrawing the amount, but has not so far withdrawn the same. That money is still lying with the Tribunal. Having regard to the long number of years that have elapsed and the fact that the claimants are entitled to relief under the law, the only dispute in the appeal and the further appeal being only with regard to the liability of the insurer to pay the amount awarded as compensation, we consider it just and appropriate to permit the claimants to withdraw the money that has been deposited by the insurer.

8. We have adopted this course having regard to the lapse of more than fifteen years from the date of the accident, during which period the claimants have been left high and dry, and merely directing them to execute the award against the owner would only mean driving them to an uncertain future and prolonging the agony for some more years. As observed by a three judge bench Bench of the Apex Court, in the case of National Insurance Co.Ltd., Chandigarh -vs- Nicolletta Rohtagi and others (2002 (4) CTC 243), the object of enacting the provisions dealing with award of compensation under the Motor Vehicles Act is to provide relief to the victims of accidents. We have necessarily to keep that larger object in view while moulding the relief to be granted. It has also been held by the Apex Court in that judgment that the object of providing for compulsory insurance is to enable the victims or the

heirs of the victims of the accidents to realise the amount of compensation from the insurer, as the prospect of realising those sums from the owners is not always very bright.

9. In this context, we notice the directions which the Apex Court has

given in the case of New India Assurance Company Ltd. -vs- Kamala (2001 ACJ 843). At para 26 of the judgment it was observed thus:-

We may point out that as per the order passed by this Court on 6.3.2 000, the appellant insurance company was directed to pay the award amount to the claimants. We are told that the amount was paid by the appellant to the claimants. Now the Claims Tribunal has to decide the next question whether the insurance company is entitled to recover that amount from the owner of the vehicle on account of the vehicle being driven by a person who had no valid licence to drive the vehicle."

That direction was made by the Court in that case as it was not clear as to whether the driver infact possessed a valid driving licence at the time of the accident. In this case, it is clearly established that the driver did not have the driving licence for driving a Heavy Goods Vehicle. The Driving Licence itself has been marked as an exhibit in this case. The liability of the owner to pay the compensation to the claimant has also been adjudicated upon and that finding has also not been challenged before us.

10. It is, therefore, unnecessary to remit the matter to the Tribunal to adjudicate on the claim inter-se as between the insurer and the owner. There shall be a decree in favour of the insurer and against the owner for the amount which the insurer has already deposited and which amount is now being permitted to be withdrawn by the claimants. It will be open to the insurer to execute this decree against the owner of the vehicle. If the claimants are entitled to any amount in excess of the amount already deposited, it will be open to them to proceed against the owner by way of execution of the award.

11. The owner's appeal is dismissed and the C.M.Ps. are closed.

Index:Yes
Website:Yes

To

1.The Manager,
National Insurance Co.Ltd.,
East Raja Street,
Pudukottai.

2.The Motor Accident Claims Tribunal,
Pudukottai.

dev/